

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Nordol, Division of the L.T.A Group, Inc. and
Philadelphia-South Jersey District Council,
UNITE, AFL--CIO.** Case 4-CA-26992-1

June 8, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND BRAME

Pursuant to a charge filed on March 31, 1998, the General Counsel of the National Labor Relations Board issued a Complaint and Notice of Hearing on April 3, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-19207. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On April 22, 1998, the Acting General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On April 24, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to recognize and bargain, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. The Respondent asserts as affirmative defenses that the Board's improper certification of the Union affected the results of the election in that a number of voters were denied the opportunity to vote, destroyed the laboratory conditions necessary to conduct a free and fair election, gave the appearance of bias and unfairly prejudiced the Employer, and that the Union and/or union supporters violated the no electioneering zone or engaged voters in prolonged discussions while they waited to vote or were going to vote.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to

adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a facility in Bellmawr, New Jersey (herein called the Distribution Center), has been engaged in the business of warehousing and trucking.

During calendar year 1997, the Respondent, in conducting its business operations, purchased and received goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 3, 1997, the Union was certified on February 11, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All regular full-time and part-time warehouse employees employed by the Employer at its 31 Heller Road, Bellmawr, New Jersey facility. Excluded: All other employees, truck drivers, clerical employees, guards, watchmen and supervisors as defined in the Act.¹

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about March 5, 1998, the Union, by letter, requested that the Respondent recognize and bargain, and, on or about March 23, 1998, the Respondent, by letter, has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹ Although the unit set forth in the complaint reads somewhat differently, we conclude, in the absence of any explanation to the contrary, that this was inadvertent. Accordingly, the unit is set forth here as set forth in the Board's Certification.

CONCLUSION OF LAW

By refusing on and after March 23, 1998, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Nordol, Division of the L.T.A. Group, Inc., Bellmawr, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Philadelphia-South Jersey District Council, UNITE, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All regular full-time and part-time warehouse employees employed by Respondent by the Employer at its 31 Heller Road, Bellmawr, New Jersey facility. Excluded: All other employees, truck drivers, clerical employees, guards, watchmen and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Bellmawr, New Jersey, copies of the

attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 23, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 8, 1998

William B. Gould IV, Chairman

Wilma B. Liebman, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Philadelphia-South Jersey District Council, UNITE, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All regular full-time and part-time warehouse employees employed by us at our 31 Heller Road, Bellmawr, New Jersey facility. Excluded: All other employees, truck drivers, clerical employees, guards, watchmen and supervisors as defined in the Act.

NORDOL, DIVISION OF THE L.T.A.
GROUP, INC.